

By: Gutierrez

H.B. No. 1692

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of motor vehicle dealers, manufacturers,
and distributors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2301.263, Occupations Code, is amended
to read as follows:

Sec. 2301.263. LICENSE ISSUED SUBJECT TO NEW LAW AND RULES.
Notwithstanding any other law and regardless of the renewal date of
a franchise agreement, a [A] license issued under this chapter is
subject to each provision of this chapter and board rule in effect
on the date the license is issued or renewed and each provision of
this chapter and board rule that takes effect during the term of the
license.

SECTION 2. Section 2301.405, Occupations Code, is amended
by adding Subsection (c) to read as follows:

(c) A manufacturer or distributor may not directly or
indirectly recover from a dealer an amount paid to the dealer under
this subchapter:

(1) by imposing a surcharge on the dealer; or
(2) in any manner other than by a chargeback as
provided by this section.

SECTION 3. Section 2301.4651, Occupations Code, is amended
by amending Subsections (a) and (b) and adding Subsection (i) to
read as follows:

(a) This section applies to a manufacturer, distributor, or representative that[+]

~~[(1) terminates or discontinues a franchise by any means without complying with Section 2301.453, or~~

~~[(2) regardless of whether the manufacturer, distributor, or representative complies with Section 2301.453,]~~

terminates or discontinues a franchise by:

(1) ~~[(A)]~~ discontinuing a line-make;

(2) ~~[(B)]~~ ceasing to do business in this state; or

(3) ~~[(C)]~~ changing the distributor or method of distribution of its products in this state.

(b) In addition to the duties placed on a manufacturer, distributor, or representative by Section 2301.465, a manufacturer, distributor, or representative to whom this section applies shall pay to the franchised dealer the following amounts as applicable:

(1) either:

(A) the dealer's construction costs for a new dealership completed in the two years preceding the date of the termination or discontinuance described by Subsection (a); or

(B) if the dealer does not have any costs described by Paragraph (A), the fair monthly rental value of the dealership payable in cash each month beginning on the first day of the first month following the date of the termination or discontinuance described by Subsection (a) and ending on the earlier of:

(i) the first anniversary of the

1 termination or discontinuance date; or

2 (ii) the date on which the dealer no longer
3 owns the dealership;

4 (2) the dealer's costs for upgrading or substantially
5 altering a dealership if the upgrades or alterations were completed
6 or added in the two years preceding the date of the termination or
7 discontinuance described by Subsection (a); and

8 (3) an amount equal to the value of the goodwill
9 associated with the franchise calculated ~~[as it existed on the day~~
10 ~~before the earlier of]~~:

11 (A) without consideration of the effect of the
12 announcement of any termination; and ~~[the date of the termination~~
13 ~~or discontinuance described by Subsection (a); or]~~

14 (B) as if the franchise were still in effect and
15 products associated with the franchise were still available ~~[the~~
16 ~~date on which the manufacturer, distributor, or representative~~
17 ~~announced its intention to terminate or discontinue the franchise~~
18 ~~in a manner described by Subsection (a)]~~.

19 (i) Except as specifically provided by this section, this
20 section does not affect the rights granted, duties imposed, and
21 procedures established under Sections 2301.453 and 2301.465.

22 SECTION 4. Sections 2301.467(b), (b-1), and (b-2),
23 Occupations Code, are amended to read as follows:

24 (b) Notwithstanding the terms of any franchise, a
25 manufacturer, distributor, or representative may not unreasonably
26 require a franchised dealer to relocate, or to replace or
27 substantially change, alter, or remodel the dealer's

facilities. Except as provided by Subsection [~~Subsections~~] (b-1) [~~and (b-2)~~], an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b-1) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership or to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date:

(1) the construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative; or [~~or~~]

(2) [~~(b-2) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date that~~] a prior substantial change, alteration, or remodel of the dealership at that location was completed if the change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or

1 through a subsidiary or agent of the manufacturer, distributor, or
2 representative.

3 SECTION 5. Subchapter J, Chapter 2301, Occupations Code, is
4 amended by adding Section 2301.483 to read as follows:

5 Sec. 2301.483. SELECTION BY DEALER OF VENDOR OR MATERIALS
6 FOR DEALERSHIP IMPROVEMENT. (a) Except as provided by Subsection
7 (b), a manufacturer or distributor may not require a dealer to
8 purchase or use specific materials or to purchase goods or services
9 from a specific vendor when making an upgrade or improvement to the
10 dealer's dealership.

11 (b) If a manufacturer or distributor provides money
12 directly to a dealer to compensate the dealer for a specific upgrade
13 or improvement, the dealer may select the materials and vendors for
14 upgrade or improvement but shall select materials and vendors that
15 are of like kind and quality to those specified by the manufacturer
16 or distributor, if any.

17 SECTION 6. Section 2301.652, Occupations Code, is amended
18 by adding Subsection (d) to read as follows:

19 (d) For purposes of Subsection (b), a protesting dealer is
20 presumed to be in substantial compliance with the dealer's
21 franchise if the dealer is not the subject of a pending enforcement
22 proceeding by the board or department. The presumption created by
23 this subsection is rebuttable.

24 SECTION 7. Section 2301.6521(d), Occupations Code, is
25 amended to read as follows:

26 (d) A franchised dealer may not protest an application to
27 relocate a dealership under this section if the proposed relocation

1 site is not:

2 (1) more than two miles [~~or less~~] from the dealership's
3 current location; or

4 (2) closer to the franchised dealer than the site from
5 which the dealership is being relocated.

6 SECTION 8. Section 2301.702, Occupations Code, is amended
7 to read as follows:

8 Sec. 2301.702. CONFLICT WITH OTHER LAW; RULES GOVERNING
9 HEARINGS. (a) To the extent of a conflict between this chapter and
10 Chapter 2001, Government Code, this chapter controls.

11 (b) A board rule relating to the procedures for a hearing on
12 or the resolution of a dispute arising under this chapter applies to
13 the person conducting the hearing or dispute resolution proceeding,
14 regardless of whether that person is the board, the department, or
15 another person.

16 SECTION 9. (a) Section 10, Chapter 684 (H.B. 2640), Acts of
17 the 81st Legislature, Regular Session, 2009, is repealed.

18 (b) The changes in law made by Chapter 684 (H.B. 2640), Acts
19 of the 81st Legislature, Regular Session, 2009, apply to a license
20 issued under Chapter 2301, Occupations Code, regardless of the date
21 the license was issued or renewed.

22 (c) Section 16, Chapter 137 (S.B. 529), Acts of the 82nd
23 Legislature, Regular Session, 2011, is repealed.

24 (d) The changes in law made by Chapter 137 (S.B. 529), Acts
25 of the 82nd Legislature, Regular Session, 2011, apply to a license
26 issued under Chapter 2301, Occupations Code, regardless of the date
27 the license was issued or renewed.

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1 SECTION 10. The changes in law made by this Act apply to a
2 license issued under Chapter 2301, Occupations Code, regardless of
3 the date the license is issued or renewed.

4 SECTION 11. This Act takes effect September 1, 2013.